

IN THE DISTRICT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARK HALE, *et al.*,

Plaintiff(s),

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, *et al.*,

Defendant(s).

Case No. 12-660-DRH-SCW

DISCOVERY DISPUTE CONFERENCE

BE IT REMEMBERED AND CERTIFIED that heretofore on 07/02/2015,
the same being one of the regular judicial days in and for the
United States District Court for the Southern District of
Illinois, **Honorable Stephen C. Williams**, United States
Magistrate Judge, presiding, the following proceedings were
recorded by mechanical stenography; transcript produced by
computer.

REPORTED BY: Molly N. Clayton, RPR, FCRR, Official Reporter
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APPEARANCES:

FOR PLAINTIFFS:

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Steven P. Blonder of Much Shelist et al., Cook County, 191 North Wacker Drive, Suite 1800, Chicago, IL 60606-1615; **and,**

FOR DEFENDANT STATE FARM:

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INDEX OF WITNESS EXAMINATIONDXCXR-DXR-CX

No witness testimony.

INDEX OF EXHIBITSEXHIBITDESCRIPTIONId'DRcv'd

No exhibits identified or received.

MISCELLANEOUS INDEXPAGE

No miscellaneous index entries.

1 THE COURT: Okay.

2 (Judge calling teleconference)

3 THE COURT: Good morning. This is Judge Williams.
4 Who is on the line?

5 MR. VEITH: Good morning, Judge. This is Paul Veith,
6 from Sidley Austin, in Chicago, for Defendant Edward Murnane.

7 THE COURT: Okay. Mr. Veith. Is it Veith?

8 MR. VEITH: Yeah. Veith. "V" as in Victor.

9 THE COURT: Okay. Good morning.

10 Anyone else on the telephone?

11 Okay. We are here for *Hale versus State Farm* for a
12 discovery dispute hearing.

13 So we have Mr. Veith on the telephone. And let's go
14 ahead and get everyone else's name in the record, starting with
15 Mr. Cloud.

16 MR. CLOUD: Good morning, your Honor, Patrick Cloud
17 for State Farm.

18 THE COURT: Good morning.

19 MR. CANCELILA: Joe Cancelila for State Farm along with
20 Nick Kahlon for State Farm.

21 THE COURT: Okay. Mr. Cancelila, Mr. Kahlon, good
22 morning.

23 MR. SCOTT: Russell Scott and Andrew Tessman for
24 Defendant Shepherd.

25 THE COURT: Okay. Mr. Scott, Mr. Tessman, good

1 morning.

2 MR. CLIFFORD: Robert Clifford for plaintiffs, your
3 Honor.

4 THE COURT: Mr. Clifford, good morning.

5 MR. RIDDLE: Kris Riddle on behalf of the plaintiffs
6 as well, your Honor.

7 THE COURT: Okay. Good morning.

8 MR. BLONDER: Steven Blonder on behalf of the
9 plaintiffs.

10 THE COURT: Mr. Blonder.

11 MR. BELLAS: George Bellas for the plaintiffs.

12 THE COURT: Okay. And Mr. Bellas. Good morning.

13 MR. SCOTT: Your Honor, we also have Megha Shah here
14 with us this morning. She has not yet entered her appearance
15 but will do so later today.

16 THE COURT: Okay. Ms. Shah, good morning. Welcome.

17 All right. We have got a number of issues to cover.
18 I've got two submissions from the parties. In addition to
19 that, we had continued the matter regarding the subpoena to
20 Mr. Kay. And let me just touch on that real quick because I
21 don't think we have anyone here.

22 MR. CLIFFORD: No, your Honor. Mr. Kay is represented
23 by counsel Gary Meadows, who has been regularly engaged with me
24 regarding production and compliance. The status is that they
25 recently produced twice the number of materials that had

1 previously been produced. We're reviewing those now. He's
2 also searching for what he believes to be a DVD or CD of some
3 kind that he has yet to find. I spoke with him just yesterday,
4 and I told him I would report this to the Court and ask the
5 Court to continue this for further status and give him
6 opportunity to continue his efforts.

7 *THE COURT:* That's fine with me. And he did file an
8 official response back on the 15th. But what we will do is, we
9 will just wait to hear from you. If you want to call it up for
10 a hearing --

11 *MR. CLIFFORD:* Great.

12 *THE COURT:* -- we can. But at some point, I will want
13 to clear the issue.

14 *MR. CLIFFORD:* Talk a little.

15 *THE COURT:* Yeah. So we can talk about it again next
16 time.

17 *MR. CLIFFORD:* Yes, sir.

18 *THE COURT:* Okay. So let's start with scope of
19 production. That's been raised as a general issue and there
20 hasn't -- other than the specific issues that plaintiff then
21 later presents, I've just got kind of a generalized complaint.
22 It appears much of the things that have been raised have
23 already been addressed. You know, all the old objections have
24 been topics that there have been supplements to. I've been
25 given a rehash of the theory of the case and the general rules

1 regarding discovery.

2 Suffice it to say that the rules provide us with the
3 framework. You know, if it's relevant to the claims and
4 defenses, that's the issue. That doesn't mean that something
5 that doesn't pertain directly to a claim or defense would not
6 be relevant to it and that's -- you know, that's what you have
7 to make a determination about.

8 In other words, is it possible that contributions to
9 other organizations other than directly to Justice Karmeier
10 could be relevant? Yes. That's a possibility. So I don't
11 know if that's what exactly we're talking about here, but I
12 need to see a specific issue that's in dispute, not a
13 generalized one, and we don't have a specific one, so there's
14 nothing to talk about on this today. But relevance is the key.
15 And it is defined by -- or the anchor for it is what's in the
16 claims and defenses. But it is broad. So, there you have it.

17 *MR. CLIFFORD:* Are we done?

18 *THE COURT:* Yeah. We are.

19 And if there's a -- so if there's a specific request
20 to produce or interrogatory that relates to the scope of what
21 the production is going to be and what is relevant and what's
22 not relevant, we can talk about that, what's relevant and
23 what's not relevant. But we are not going today because I
24 haven't been presented with anything specific beyond what's in
25 the papers.

1 So let's move on to the next thing. The next thing is
2 the search terms. So we are still arguing about search terms.

3 MR. CLIFFORD: Well, may I address that, please?

4 THE COURT: Sure.

5 MR. CLIFFORD: Your Honor, thank you.

6 We met with counsel for State Farm. We pared -- I
7 personally pared the search terms down dramatically. In the
8 meeting that we had, the meetings that we had, I left those
9 meetings believing that we made enormous reductions. I did not
10 hear one word at that time about they're still too broad. We
11 have this issue about "relevancy" and who wants to define it
12 and what it means.

13 THE COURT: Yeah. Here's a specific issue on
14 relevance. I agree.

15 MR. CLIFFORD: And, frankly -- and I don't know where
16 to even begin with this one. But, you know, we have, as you
17 would expect, outside consultants that we talk to on a regular
18 basis. Just yesterday we are being told by our consultant that
19 the production -- and it's having an impact on the search for
20 relevancy, for relevant information, has been done in such a
21 way that the metadata has been -- there's a lot of different
22 words being used -- altered, manipulated, changed. And we will
23 be more than happy to make those people available to the Court
24 to talk further about it. But we now have --

25 THE COURT: Right now we are just talking about search

1 terms. Those are issues that are also in the papers that have
2 been submitted, at least what I've read.

3 MR. CLIFFORD: But as far as the plaintiffs are
4 concerned, we have pared the search terms down to the core. We
5 have not been told that it is not enough. Again, we have yet
6 to be told that. We went further than we thought we would or
7 should, but we did it to get this rolling. And that's where we
8 stand, and we stand on our search terms as provided to counsel
9 in this last meeting.

10 THE COURT: Right.

11 And so their -- defense position -- go ahead and give
12 me your quick response.

13 MR. KAHLON: Sure your Honor. The quick response is
14 that when we had the meeting, which is referenced in our
15 papers, we walked away from that meeting -- and I actually have
16 a marked-up list of search terms -- believing that the
17 plaintiffs were going to pare their list down by half or more.
18 And I've got Xs through all the terms that we went through.
19 When we got the -- and that the remaining terms, we had a brief
20 discussion with them, and I thought that we were going to get
21 limiting terms imposed on those. We weren't going to have all
22 of these, for example, 600 "ors" that, as we pointed out
23 previously, dramatically expands the list of terms.

24 The list we finally got weeks later doesn't comport
25 with what we believe we understood was going to happen at that

1 meet-and-confer. And so our concerns remain with the list. We
2 don't believe it's been sufficiently pared down. We have given
3 your Honor a couple of examples where they have actually
4 expanded terms. We still have over a thousand terms once you
5 include all of these "ors" that seek all kinds of irrelevant
6 information. We don't believe that they have complied with our
7 request for reasonable terms, what the *Sedona Principles*
8 suggests the parties at the beginning should talk about, which
9 never happened, as your Honor pointed out. And we don't
10 believe that they've complied with the Court's orders on this
11 point.

12 THE COURT: Okay. So this is what we are going to do.
13 I was hoping we didn't have come to this. But we are going to
14 meet, assuming my trial is over on July 8th, you are each going
15 to designate one person who is going to be here. As many
16 people who want to come can come. We are not doing it by
17 phone. We're going to sit at one of these tables. I'll turn
18 on the court's recording equipment. And I'm going to sit with
19 those two people, and we are going to go through all of this.
20 And at the end we are going to have search terms and the "ands"
21 or "ors" are going to be worked out. So get a hotel room
22 because we might be here really late. I'll see you on July 8th
23 for that one.

24 MR. CLIFFORD: 10:00? 9:30? 8:30?

25 THE COURT: You are going to be here at 2:00. We are

1 going to start at 2:00.

2 MR. CLIFFORD: Okay.

3 THE COURT: I'd like to think we could start earlier
4 than that. We might actually have to start later than that.
5 It just depends on the trial.

6 MR. CANCELA: I'm sorry, Judge. Could you say that
7 time again?

8 THE COURT: 2:00.

9 If you want to come early...

10 MR. CLIFFORD: Watch the trial.

11 THE COURT: If you don't mind waiting, we can do that.
12 So you guys talk about that.

13 So that way we can get started earlier.

14 All right. And in -- what I want to do, then,
15 obviously, at that is you will have identified what it is we
16 are going to argue about, and we are just going to take them
17 one at a time and go through all of the "ands" and "ors." And
18 I guess it is mostly "ors" that the concern is.

19 And the fact that there may have been a term added to
20 it, that I don't deem as particularly problematic necessarily
21 because it is a work in progress, obviously, still. But for
22 whatever reason, you all can't come to an agreement after
23 months of talking about this, which I find astounding. And,
24 yes, we didn't get started on this when we should have. That
25 would have been last year when you all would have looked at

1 this and started trying to work on it in the first place, but
2 neither side made that attempt either.

3 So, now, with the next issue is the Avaya phone
4 records. Is this something that we need to actually address?
5 It says: "We still don't have a date for the discussion on the
6 scope of that production." So I assume that that means that
7 there's still to be a meet-and-confer.

8 On the other hand, from the plaintiffs -- or, rather,
9 the defense response is they've migrated 3.7 billion records
10 from the Avaya phone system and are now confirming the records
11 have migrated successfully. So that's really where it stands,
12 and you are going to meet-and-confer, is what it sounds like,
13 right?

14 MR. KAHLON: That's correct, your Honor.

15 THE COURT: Okay. Mr. Bellas.

16 MR. BELLAS: I don't think a meet-and-confer is
17 necessary. The question is, When are they going to complete
18 it? Because they said they were going to produce it in an
19 Excel spreadsheet to review. I don't know if a meet-and-confer
20 is necessary.

21 THE COURT: Oh, okay. Well, I'm just reading the last
22 sentence that the plaintiffs provided to me: "We still don't
23 have a date for the discussion on the scope of that
24 production."

25 So that assumes that there's going to be some

1 discussion, according to you.

2 MR. BELLAS: Yeah. Again, we would like to know when
3 it is going to be completed. We are up against the clock on
4 this matter.

5 THE COURT: Okay. So...

6 MR. KAHLON: Your Honor, just to be clear, there's
7 never been a request for any particular phone records. What
8 the request was, when we started talking about this, we told
9 them we've got these old tapes, which I thought were physical
10 tapes, and it turned out they're like virtual tapes of some
11 kind. Those are in the process of being migrated to Cisco. We
12 believe they will be searchable. When we complete that
13 process, we'll talk to you about what you want to search for
14 then. We never said we were going to give them 3.8 or
15 3.7 billion phone records.

16 THE COURT: I know. What it says is that's what you
17 were migrating.

18 MR. KAHLON: Exactly. And so we just haven't had even
19 the discussion of what they're looking for in those tapes and
20 what kinds of phone records they want. We are going to have
21 that once we know what we can search and what the searchability
22 is. That was my understanding.

23 THE COURT: And has there been a formal request for
24 phone records or a request that you believe encompasses the
25 phone records?

1 MR. BELLAS: Absolutely.

2 THE COURT: Okay. So tell them what that is because
3 they think you haven't requested it formally, although you are
4 looking for it. So you are doing that for a reason. I'm
5 assuming there's a reason why you are actually complying with
6 the request to look at the phone records.

7 MR. KAHLON: Because we are good guys, your Honor. We
8 had these meet-and-confers about data sources. We pointed this
9 out. They asked us what the searchability was. We disclosed
10 it. I scoured the request. I don't see anything for phone
11 records, but we are going to do it anyway. I don't have a
12 problem working with them on framing that request, giving them
13 the information they reasonably want once they tell us what it
14 is, but I haven't had that call. There's been a subpoena for
15 phone records on third parties, but nothing to State Farm.

16 THE COURT: So in terms of what it is you are looking
17 for, you believe they already know what it is you want.

18 MR. BELLAS: Yes, sir.

19 THE COURT: Okay. They say they don't. Where does
20 that -- where does that disconnect come from?

21 MR. CLIFFORD: It's a mystery, Judge. We will
22 meet-and-confer with your permission.

23 THE COURT: Yeah. Okay. That sounds good.
24 Meet-and-confer no later than next Wednesday. But next
25 Wednesday is not going to be for the purpose of doing anything

1 other than going through the search terms. That's just when
2 you will have your meet-and-confer by.

3 MR. CLIFFORD: A point of order?

4 THE COURT: Yeah.

5 MR. CLIFFORD: So on next Wednesday, and given what
6 you just said, would you mind if the parties being prepared,
7 though, once you get past the search term issue, to broaden the
8 discussion to what we believe are some serious ESI questions
9 that at least ought to be teed up and addressed and framed?

10 THE COURT: Well, let's --

11 MR. CLIFFORD: I don't know for a decision, but at
12 least talked about broadly.

13 THE COURT: Aren't we going to talk about some of
14 those today?

15 MR. CLIFFORD: I hope we are.

16 THE COURT: Yeah. I mean, there are other issues
17 raised regarding ESI here in these papers.

18 All right. The organizational charts: No one has
19 identified for the 2002 to 2005 time period from the public
20 policy group federal affairs or special projects and strategic
21 alliances groups as it relates to identifying custodians
22 involved in the Avery litigation. That's one of the things
23 that's raised regarding organizational charts.

24 State Farm has never agreed that it would provide a
25 list of current and former assistance. I don't think we are

1 talking about the same thing here.

2 So from the plaintiffs perspective, where is the
3 deficiency in what the Court has previously ordered or what has
4 been agreed to that needs to be cured prior to what I already
5 said, is, go ahead and do your 30(b)(6) on this. This is what
6 led us down this path. Now, 30(b)(6) is appropriate.

7 MR. BELLAS: We will issue the 30(b)(6).

8 THE COURT: Okay.

9 MR. BELLAS: Judge, the point is that we are seeking
10 custodians for that time period that we're involved in a
11 portion apparently and as best we can determine so far, the
12 corporate level department had several departments, one of
13 which was public affairs or lobbying groups or whatever that
14 were under the umbrella of the legal department. We are still
15 trying to identify what potential custodians there were in
16 those departments and who was in those departments at the time.

17 THE COURT: Right. I understand that's what you are
18 looking for. Has -- so what I'm not clear on is, have they not
19 given you something that the Court has ordered them to give you
20 that you believe they have?

21 MR. BELLAS: The answer to that is no.

22 THE COURT: So the reason we were going through this
23 process is to short-circuit some of these 30(b)(6) topics that
24 were just noticed right off the bat before any meet-and-confer.
25 This, as the Court has already said now is -- it's reached the

1 point where the meet-and-confers have apparently run dry, and
2 this is now an appropriate topic and was as of our last hearing
3 for a 30(b)(6).

4 MR. BELLAS: Okay.

5 THE COURT: There were certain things that the Court
6 did not feel were appropriately addressed by way of a 30(b)(6).
7 This clearly is. I understand why you want it.

8 MR. BELLAS: Okay.

9 THE COURT: So --

10 MR. BELLAS: All right.

11 THE COURT: -- that's the route that we go at this
12 point.

13 MR. BELLAS: We will issue it immediately, your Honor.

14 THE COURT: All right.

15 There is a subsection or a topic heading of "ATRA" in
16 the plaintiffs' submission which is not -- it doesn't have a
17 corresponding heading in the defenses' response so...

18 MR. KAHLON: Your Honor, just to flag it for you, we
19 addressed in the trial scope of production. We used it as an
20 example on Page 1 of our response to plaintiffs' status report.
21 We addressed that contention regarding ATRA --

22 THE COURT: Okay.

23 MR. KAHLON: -- to point out that we actually have
24 agreed to do something different than they're representing, and
25 we actually have produced many ATRA communications.

1 *THE COURT:* Okay. So where's the deficiency? Right
2 on Page 1 of their response, it says: State Farm agreed to
3 produce all nonprivileged documents related to the American
4 Tort Reform Association that relate to Justice Karmeier, his
5 election, the involvement of any defendant in the election for
6 the purported concealment of such involvement or Avery, in
7 addition to all records of State Farm's contributions to ATRA
8 over the ten-year period from 2001 to 2011, plus all
9 nonprivileged documents that reference ATRA in any way,
10 regardless of any connection with this lawsuit during the time
11 period of the Justice Karmeier recruitment campaign or
12 election.

13 So this is what they've agreed to produce.

14 *MR. BELLAS:* Now we have it clarified, your Honor.

15 *THE COURT:* All right. Great.

16 *MR. KAHLON:* Just to be clear, that was in our
17 supplemental discovery responses.

18 *THE COURT:* I understood that, and I did see it in
19 here. And it's just not in a separate heading. So I
20 appreciate that.

21 All right. Now, moving on to -- in other words, it's
22 already been produced. So if you can't find it, ask 'em where
23 it is that they say, but I think in their letter they indicate
24 that it's already in there.

25 *MR. BLONDER:* Judge, that issue of where it is in the

1 production is an issue that we have framed, I think, later on.
2 It will be ripe for discussion later on. That's something that
3 we want to talk about.

4 *THE COURT:* Okay.

5 Retention periods.

6 *MR. BELLAS:* Your Honor, you've clarified that that
7 was one of the issues that we could take a 30(b)(6) on, and we
8 will issue the notice for that.

9 *THE COURT:* Okay. I did not have this flagged as a
10 30(b)(6) issue. But is everyone in agreement that this falls
11 within the scope of what's been identified as a topic the Court
12 has said go forward with your 30(b)(6)?

13 *MR. KAHLON:* Yeah. Your Honor, I think at one of the
14 earlier hearings your Honor did say if they had questions about
15 the retention program, that might be appropriate for a
16 30(b)(6).

17 *THE COURT:* Okay. Thank you.

18 All right. Payroll records: State Farm indicates
19 that their records are kept in separate module with the
20 PeopleSoft software. Plaintiff wishes to discuss the searches
21 that can be paid of the payroll records -- I'm jumping to the
22 last sentence -- to ensure that the pertinent information is
23 received. State Farm refuses to engage in any preproduction
24 discussions relative to the searches that are conducted. So
25 that is essentially plaintiffs' contention.

1 State Farm says it never refused to engage in any
2 preproduction discussions relating to searches that are
3 conducted. State Farm objected to plaintiffs' new request for
4 production of payroll records for dozens of individuals, many
5 of whom are not even employed by State Farm. Plaintiffs have
6 never raised any issue with that objection, and the parties
7 have not conferred. So, disconnect again.

8 MR. BELLAS: In our second supplemental request for
9 production of documents, we asked for that specifically, and we
10 are trying to engage in a discussion about a search of their
11 payroll records, as we should under 26(f), and we haven't had
12 any opportunity to discuss that with them as to what should be
13 searched and how they should be searched or what modules they
14 are, what format they are in, what search terms might be
15 appropriate so that we could narrow it down and get that
16 record. The point is, apparently, those individuals made
17 contributions directly to the campaign, and we are trying to
18 find out if there were corresponding payments to those
19 individuals from State Farm to reimburse them for those
20 expenses. And it's a very simple request. I don't know why
21 its gotten complicated.

22 THE COURT: Okay. So at this point, though, you have
23 said they're not going to discuss it with you. They say they
24 haven't. So you just have to have the discussion. I
25 understand what Mr. Bellas is saying. There is a request out

1 there.

2 MR. KAHLON: Yeah.

3 THE COURT: Now, if there's -- as far as an objection
4 goes, we may as well talk about that.

5 MR. KAHLON: Your Honor, just to be clear, that
6 explanation is the first time I'm hearing about why they've
7 listed these 40-plus individuals for whom they want payroll
8 records. That's the point. We got this request. We served
9 our objections. We haven't had any sort of articulation of why
10 they believe the information is relevant for those individuals.
11 Now that I'm hearing that, I have no problem having a
12 conference with them about whether or not that's appropriate
13 information or what we would be willing to produce and so
14 forth.

15 THE COURT: Okay. So meet-and-confer by next
16 Wednesday.

17 All right. Machines in storage: So the Court ordered
18 designation of hard drives to be searched. And what the
19 plaintiffs did, according to the defense, was designated 19
20 instead of 20, unilaterally decided to reserve whether or not
21 to designate a 20th, and propounded a number of questions
22 instead of designating a 20th.

23 And then that's where it stands, right?

24 MR. KAHLON: Yes, your Honor.

25 MR. BELLAS: That's correct.

1 THE COURT: All right. Okay. So -- so you just -- so
2 it's true. You just decided you weren't going to designate a
3 20th, you wanted to get this information first.

4 MR. BELLAS: That's correct, your Honor.

5 THE COURT: All right. Well, designate your 20th, and
6 then we can talk about this other issue.

7 When this was brought to the Court, we talked about
8 this issue. Designate your 20, see what happens, and then we
9 will talk some more. So that's the process that we adopted.

10 Archiving of e-mails: All right. So there was a
11 letter provided on June 26th. Does this address the question
12 or not?

13 MR. BELLAS: Yes, it does, your Honor.

14 THE COURT: Okay. Document management policy.

15 MR. BELLAS: This goes to the 30(b)(6) issue.

16 THE COURT: Okay.

17 Are we in agreement on that, that the -- I mean, oh,
18 yes, I'm sorry. This -- we are not at the format of State
19 Farm's production. So, still, on document management policy,
20 are we in agreement that a 30(b)(6) is appropriate on this?

21 MR. CANCILA: Well, your Honor indicated that a
22 30(b)(6) was appropriate on that.

23 THE COURT: Well, that's what I'm going to make sure
24 that we are in agreement. This is a topic that was covered by
25 the scope of a previous order.

1 MR. CANCELA: Yeah, right. We thought that the
2 records that we produced were sufficient to answer the
3 questions, but your Honor disagreed with that.

4 THE COURT: Yeah. So do the 30(b)(6). We don't need
5 to talk about that one any further today.

6 All right. Now, format of State Farm's production.

7 MR. CLIFFORD: May I, your Honor?

8 THE COURT: Yeah.

9 MR. CLIFFORD: On format of State Farm's production,
10 there's two issues that come to mind. The first is that as
11 near as we can tell, it is impossible for us to determine which
12 production request they're responding to with a given
13 production. We feel they have an obligation -- excuse me, your
14 Honor.

15 THE COURT: This is -- we are talking about here.
16 This is how it's framed because we've got a number of different
17 issues. So this is the first submission. Here's how you all
18 frame it.

19 "Format of State Farm's Production to Date:
20 Plaintiffs requested State Farm confer with plaintiffs before
21 their initial production. State Farm never did but produced
22 documents in a default format that plaintiffs had requested
23 with no prior discussions. However, there have been problems
24 with the production format. For example, State Farm does not
25 provide all of the fields that are listed in the discovery

1 protocol. For instance, a document extension or 'date sent'
2 are routinely missing."

3 So this is -- this relates to ESI issues.

4 MR. CLIFFORD: Right. I just started with the wrong
5 issue, according to both of you. The issue that we think is
6 teed up and is foremost for us to talk about today is the fact
7 that the metadata has been mechanically manipulated or
8 eliminated. There is a manufactured field. We cannot tell the
9 file path. The file path has been interfered with. They claim
10 that they have the right to do that, based upon their sense of
11 work product and/or privilege. When we requested the material
12 in its native form, it is indisputable that that is an
13 industry-wide understanding that metadata is being requested
14 as-is, and it's been altered. And it's created a lot of
15 difficulties relevant to searching, including this issue of
16 identifying where it came from and what it's responsive to.

17 So I start that as our first issue to discuss.

18 MR. BLONDER: Just to add to that, Judge, we had a
19 meet-and-confer -- and this jumps into our second submission
20 from the parties with respect to the second set of production
21 requests. On Monday of this week, e-mail Mr. Bellas, myself,
22 and Mr. Riddle, and we asked the question about the -- for
23 example, the file path information, which would be akin to
24 saying, hey, where -- whose file cabinet -- it was a hard
25 document. Whose file cabinet was it in? What was the routing

1 of it, and who's touched the document?

2 *THE COURT:* So we are combining --

3 *MR. BLONDER:* Right. This is the --

4 *THE COURT:* -- the first issue and the second
5 submission --

6 *MR. BLONDER:* Yes.

7 *THE COURT:* -- regarding plaintiffs' second set of
8 production requests with the second-to-last issue in the first
9 submission.

10 *MR. BLONDER:* Correct, because there is some overlap.
11 And, Judge, one of the things that they told us is, the way
12 State Farm has collected documents in this case, there's
13 apparently additional metadata being put into the system such
14 that they can't give us file path information because it would
15 reveal information about how they're gathering materials or
16 reviewing it, which, to us, is nonsensical. And it may happen
17 that way, but what it is doing is, it's depriving us of the
18 actual information about where the document was sitting, whose
19 files it was in, where it went, which is the information we
20 want.

21 So they're either altering the document, if that's
22 happening, or there's got to be a way to segregate it out and
23 say, okay, from the document prior to any collection efforts in
24 this case, here's the metadata that goes to that. And what our
25 consultant has informed us is what they've done is created some

1 artificial fields such as "to" or "from" to kind of manually
2 input information.

3 Again, this is what our consultants have shared with
4 us in looking this through. So the end result is we can't go
5 through and identify what was there. You know, date issues are
6 all messed up, as we've kind of given examples in the
7 submission, and it's causing us a real problem in terms of
8 searching, matching, putting things together.

9 THE COURT: Okay. So let's first start with, in what
10 way -- Mr. Blonder, I have a question for you and then I'll --

11 MR. BLONDER: Yes.

12 THE COURT: So, first off, in what way is this
13 deviating from the protocol that was agreed to in the case, the
14 ESI protocol?

15 MR. CLIFFORD: There wasn't a formal protocol. There
16 was -- initially, going back a year ago, we asked for -- we
17 sent a letter and kind of -- we went through and we thought --
18 we asked for things in native format, and we asked for some
19 specific fields as well. What it appears to us -- again, and
20 I'm certainly no ESI expert, you know, we rely entirely on what
21 our consultants tell us, is that we have manufactured fields in
22 here, and we don't have the native form.

23 THE COURT: Okay. Well, I just want to make sure that
24 we don't -- would you agree there's not an ESI protocol that's
25 been agreed to?

1 MR. KAHLON: Not at all, your Honor. I'm happy to
2 make my presentation, if you would like.

3 THE COURT: Yeah.

4 MR. KAHLON: Okay.

5 THE COURT: I'm talking about just outside of what the
6 rules provide.

7 MR. KAHLON: I agree. So let's be clear about what
8 was requested and where we are now; no ESI protocol agreed to
9 before requests for production served, no protocol in the
10 requests themselves. We get a letter from Mr. Blonder on
11 June 2nd specifying the production format that they wanted.
12 Okay. And that's important when you get to metadata issues.

13 THE COURT: June 2nd of this year.

14 MR. KAHLON: No. June 2nd of 2014, your Honor.

15 So that's several months after they served the request
16 for production. After we had already collected documents,
17 Mr. Blonder sends us a letter saying here's the format we want
18 your production to be in. No request for native file format,
19 let's be very, very clear about that. What that letter
20 requested was searchable TIFF images. Subsequent to that
21 letter, I think like a week or two because we actually
22 physically produced the disk, Mr. Bellas asked during a
23 meet-and-confer if they could have e-mails in native file
24 format. We said we will attempt to do that going forward after
25 this production. So that's the protocol that the parties had

1 agreed to.

2 We had already collected our documents. They asked
3 for a specific production format. File path wasn't in there.
4 And then after that, Mr. Bellas says, We would like e-mails in
5 native file format. We said we would attempt to accommodate
6 that request. Since that production, I believe we actually
7 have produced most e-mails, to the extent they exist in native
8 file format, in that format.

9 This notion about manufacturing data, the first time
10 we heard about this was in the paper that we got, I think, late
11 Tuesday night. So we haven't even had a chance to look into
12 this, haven't had a chance to talk to plaintiffs' counsel about
13 it.

14 What I think that might be referring to is the fact
15 that when e-mails are in hard copy format, when there is a PDF
16 of a document, for example, State Farm has software that
17 populates the fields for the benefit of the plaintiffs. It is
18 not a document that exists in electronic format. It is a scan
19 of a paper e-mail that's been printed out and stuck in a file.
20 That's where, for example -- and we explained this to them in
21 summer of last year -- that there will be certain documents
22 that have, for example, the 1902 date field. Because if it is
23 a scan of a PDF document, sometimes the software can pick up
24 the date and sometimes it can't. And where it can't, it will
25 put in that date as a filler. We explained that to them many,

1 many months ago, your Honor. They keep rehashing that issue,
2 even though we've talked to them about it.

3 So that's the protocol that the party -- that they
4 requested and that we have conformed with up until now. The
5 issues that they raised in their paper about these so-called
6 format of production issues relating to "date sent," I think we
7 did a pretty good job of explaining why those aren't issues.

8 The only new issue is date sent, date type, or date
9 extension field or something. They said there's some documents
10 for which those fields are combined, which, by itself, is a
11 concession that, contrary to their paper, we actually gave them
12 that information. We went back and looked. Since we got this
13 paper on Tuesday -- I'm sorry on Monday -- we went back and
14 looked and can't find which ones they are talking about; happy
15 to confer with them to straighten out that issue.

16 But this file path issue, it is a complete new request
17 that came out after we had already collected documents, after
18 they had already served the request for production, after the
19 protocol that we've attempted to comply with has already been
20 agreed to by us, and after we have already produced documents.

21 We set forth in our papers why we don't believe
22 they're even entitled to that information. But the core point
23 is, the cat's out of the bag, and if we had talked about this
24 at the beginning, then when we collected documents, if we had
25 agreed to provide that information, we could have taken steps

1 to prevent the issues that Mr. Blonder is referring to now.

2 And just for the Court's benefit, what that is, is the
3 file path won't show necessarily who the document came from.
4 If it resides, for example, in State Farm's e-mail archive
5 database -- and this is, again, something we have already
6 explained to them -- there isn't a custodian of it in the
7 classic sense. There is one individual, a systems person, who
8 is kind of responsible for maintaining that archive; not very
9 many e-mails in that archive relevant to this case, produced
10 them to the extent that we think that they are or they hit on
11 any of the terms. The file path would show, for example, that
12 e-mail archive then when it went -- that it went to corporate
13 law, then that it went to review platform.

14 Because they never requested that information, we
15 never conferred about it or never took steps to make sure any
16 of that information was preserved at any step of the process.
17 So if we were to go back and try and recreate it, we would have
18 to do an enormous amount of redactions, so that's, I think, the
19 issue, your Honor. So I just wanted to make sure that your
20 Honor was clear on our positions.

21 *THE COURT:* So the -- they're asserting that they did
22 ask for native files and that that would have included file
23 path information.

24 *MR. KAHLON:* I don't agree, your Honor.

25 *THE COURT:* Let's just get to that. Do you agree they

1 did ask for native files last year?

2 MR. KAHLON: I agree that they asked for e-mails in
3 native file format. I don't agree that by asking that, that
4 somehow includes retroactively all of the metadata that they
5 think that they're entitled to.

6 And my -- Mr. Cancila just further confirmed to me
7 that that was after most of documents had already been
8 collected and produced.

9 THE COURT: Right. So what you are saying, when you
10 were making -- when you were starting off, you said, We had
11 some requests regarding the format that came in, in June, after
12 we had done our initial production, and then you get another
13 call and -- from Mr. Bellas asking for e-mails to be produced
14 in native file format.

15 MR. KAHLON: After the initial collection and
16 production is pretty much already completed, your Honor. And
17 it wasn't a call, it was during a meet-and-confer. And so what
18 we said was that going forward we will attempt to produce
19 e-mails in native file format, and we have attempted to do
20 that. But those are, I believe, already e-mails that we had
21 already collected. And so, yeah, for example, they were --
22 hadn't been produced yet, or we were in the process of
23 reviewing them for privilege, and so then when we went forward
24 after that request, we have attempted to produce those e-mails
25 in native file format.

1 MR. BLONDER: Judge, there was a misconnection. They
2 did a collection. They didn't produce documents until
3 significantly after that point in time. So they -- it wasn't
4 that they produced things, and then we said want a different
5 format, that's Number 1. Number 2, our understanding --
6 Mr. Bellas can speak more to it -- in asking for things in
7 native format, which Mr. Kahlon confirmed we did do, that would
8 include the file path.

9 THE COURT: That's what I'm trying to narrow in on, is
10 their contention, though, is that it was only with respect to
11 e-mails that hadn't yet been either collected or produced.

12 MR. BLONDER: No. We asked for e-mails in native
13 format, which is what we asked for.

14 THE COURT: Okay.

15 MR. BLONDER: And at that point, nothing had been
16 produced. We didn't know what they were doing in terms of
17 document issues. So it's not that, hey, we got something,
18 didn't like it, and said go back and do it again. We were
19 saying --

20 THE COURT: Okay. Let me address that particular
21 point. First of all, we are talking -- as far as the request
22 for documents to be in native file format, I don't know how
23 much this makes a difference in terms of the total production,
24 but we are talking about that request was made relating to
25 e-mails.

1 MR. BELLAS: It was actually -- your Honor, first of
2 all, let me -- we will try to cut this.

3 THE COURT: Well, that's what I'm trying to do, is get
4 down to what everyone agrees to, if there's anything.

5 MR. BELLAS: But this has also been --

6 THE COURT: We are talking about stuff that happened a
7 year ago now.

8 MR. BELLAS: I agree. Going back to our initial
9 preproduction 16 -- Rule 16 conference. I specifically
10 remember two occasions where I looked at -- I talked -- it was
11 on the telephone. I asked if we could have an e-discovery
12 conversation. "We are not ready" was the answer we got. So
13 before anything was being done, just to set the scheduling
14 order, I specifically asked for an e-discovery conference.
15 They told me on two occasions, "We are not prepared to have
16 that discussion."

17 At our first face-to-face, I said can we have an
18 e-discovery conversation. This was before any production.
19 That was the first time Mr. Kahlon sat across from me and said
20 that "we have documents in hard copy." And we went back and
21 forth on that issue, saying that that's how they retain
22 documents. And then he started talking about what they were
23 doing, without any conversation about us, about what we wanted,
24 and that they were going ahead with it. Following that, I sent
25 a letter, the June 2nd letter. The letter -- the last

1 paragraph, I believe, of that letter says our first preference
2 is to have everything in native file format.

3 Let me say something further about the native file
4 format. The rules say that we should be getting documents in
5 native file format, not anything else. Then if there's issues
6 with that and we can't get it, then there's a discussion about
7 what should be done.

8 ESI is a very important -- an important part of
9 production of ESI is the metadata, and that should be preserved
10 for us in the native file format with everything else.

11 One of the essential elements of that is the file path
12 and the content. The information we have indicates that that
13 file path had to have been removed from the data that we got.
14 In other words --

15 *THE COURT:* I understand that part. I understand the
16 importance of the metadata, and what I'm trying to hone in on
17 is when things were produced, when things were asked for, what
18 was agreed to, and then there's also what's in the rules.

19 *MR. BELLAS:* Okay.

20 *THE COURT:* All right. So...

21 *MR. BELLAS:* So the answer to those questions, then,
22 is, Number 1, nothing was ever agreed to in advance, all right.
23 We never had a discussion.

24 *THE COURT:* But you did ask for documents in native
25 file format in your June 2nd letter.

1 MR. BELLAS: Yes, sir.

2 MR. KAHLON: That's not right, your Honor. The letter
3 didn't come from Mr. Bellas, it came from Mr. Blonder.

4 MR. BLONDER: Mr. Bellas wrote it.

5 MR. KAHLON: No. well, it wasn't signed by him. We
6 had had a meet-and-confer subsequent to that that letter, which
7 was when Mr. Bellas raised -- it was the first time I ever
8 talked to Mr. Bellas, where he raised to me for the first time,
9 "We want e-mails in native file format."

10 He may be referring to a second letter. I can
11 guarantee you the June 2nd letter, which we've attached
12 multiple times, doesn't ask for anything in native file format,
13 which was the very issue that we raised with Mr. Bellas at that
14 subsequent meet-and-confer.

15 The request for production had been served back in
16 March. By the time of the June 2nd letter, we were already
17 preparing the documents for production. By the time of the
18 meet-and-confer, where the native file format request was first
19 made, we were literally in the process of getting the documents
20 burned to disk, so we said, We can't accommodate you this time.
21 Going forward, when we produce e-mails, we will attempt to
22 produce them in native file format.

23 That's also in a confirming letter, which was
24 attached, I believe, to our February 2015 letter brief. We
25 have already gone through this time line with them multiple

1 times.

2 MR. BELLAS: At the end of the day, your Honor, in
3 order for them to have produced the documents in native file
4 format, it should have had those fields in it, and those fields
5 aren't there. For them -- for those documents now to not have
6 that field is of concern to us. And it ought to be to the
7 Court because they have to have purposely gone into every
8 document and removed that path. I will admit that it was an
9 oversight on our part in the June 2nd letter where we
10 identified the fields that we wanted, that the file path was
11 omitted. It was a mistake. But that file path is part of the
12 native file format.

13 More importantly now, with the second request for
14 production of documents, we have asked for that, all of those
15 fields, in the second request for production of documents. So
16 going forward, all right, we should -- we may be able to get
17 it. I don't know. We haven't seen the documents that have
18 been produced pursuant to that second request. They have not
19 raised an issue with the format that we have made -- the
20 request we made in that second request. They've objected to
21 it, but we've not had a discussion about that yet.

22 And those -- we got those objections last Friday, I
23 believe, their responses. At the end of the day, we still lack
24 essential information that should have been part of the
25 document.

1 THE COURT: Well, the way we got here is still
2 important to that because we are talking about requests that
3 were made a year ago, responses that were received months ago.
4 And now we've got a new set, which is different. So the fact
5 of whether or not you requested it and when you requested it to
6 be in native file format versus when things were received is
7 very important.

8 So would you agree, Mr. Kahlon, though, that when we
9 are talking about -- when a request for something in native
10 file format is made, that should include the file path
11 information?

12 MR. KAHLON: I don't agree, your Honor, because I've
13 never seen any authority for that position. I understand that
14 they're asserting it here. If that had been part of what -- it
15 certainly wasn't part of what we had agreed to because, recall,
16 by this time, we had already collected all the documents.

17 THE COURT: Yeah. But they're saying that you didn't
18 engage them in the ESI protocol discussion.

19 MR. KAHLON: I'll let Mr. Cancila speak to that, but I
20 will point out that the critical fact is, your Honor -- first
21 of all, I wasn't involved. The first time I talked to
22 Mr. Bellas was months after they served the request for
23 production. The key in my mind, because it is based upon what
24 the rules say, no production format in that request. So then
25 we go out, and the rules then say if they don't request a

1 particular format, you, the producing party -- it is subpart
2 (ii) of 34(b)(E), I think, says that if no request is
3 specified, no format is specified, you, the producing party,
4 have the option of doing it these ways. So that's what we
5 started doing.

6 Then we get the June 2nd letter, and we say, Okay.
7 You guys are asking for these fields. We are going to try and
8 include them. You just heard Mr. Bellas say no request for
9 file path.

10 *THE COURT:* Right.

11 *MR. KAHLON:* We have also attached that letter
12 multiple times, and no request for native format. Then they
13 request native format, and we said, Okay. We will try to
14 produce them in native format. And the representation that was
15 made to us at the time was, Well, native format will allow us
16 enhanced searchability. We want to be -- fine. We will try to
17 and produce them in that manner, and that's all we have tried
18 to do. The rules say what the rules say, and we have tried to
19 accommodate that.

20 *THE COURT:* All right. So going from the moment that
21 it is requested that they are produced in native file format,
22 when you say "we'll try," what do you mean by "we'll try"? Did
23 you do it or not?

24 *MR. KAHLON:* We have. I don't think there is any
25 dispute that we have produced many e-mails. I think we've

1 produced over a thousand. This is, again, in one of our letter
2 briefs, we pointed it out. I think we have produced over a
3 thousand e-mails in native file format.

4 *THE COURT:* Yeah. And I can't -- I don't have a bank
5 of chapter and verse of all these issues in my mind, so you are
6 going to have to be clear about where -- if there's something
7 you want me to look at in a prior letter, we are going to have
8 to get it out and have me look at it.

9 *MR. KAHLON:* That's fine, your Honor. I'm going off
10 of memory.

11 *THE COURT:* I'm not disputing what you are saying.

12 *MR. KAHLON:* Yeah. I don't think there is any
13 dispute. I think they were just saying when they produced it
14 in native form, they didn't contain X, Y, or Z. So we have
15 attempted to accommodate that request, again, in our view,
16 belated request, but we have attempted to accommodate it, to
17 the extent we can.

18 This issue of file path, again, never raised until
19 after our productions. We understand, yes, they have now
20 requested in their second set of requests for production. The
21 point that we make in our papers is that those requests are
22 largely duplicative of ones we have already received and that
23 we have already produced documents for, so we certainly are not
24 required to go back and re-produce documents. The rules are
25 pretty clear on that.

1 So I think the only issue that we're dealing with here
2 is whether going forward for the documents that -- the
3 additional documents that are responsive to this second request
4 for production, we should include that information. The point
5 that we make in our papers is, we are still going to have to go
6 back to documents we have already collected largely, and we
7 don't believe that they would be entitled to this information
8 anyway. That's how I -- that's at least how I see the dispute.

9 *THE COURT:* All right. So before we get to whether
10 you are entitled to it under the rules in the first place,
11 let's then address -- well, if you want to make one more
12 comment regarding the things that were asked for and produced
13 months ago.

14 *MR. CLIFFORD:* Well, certainly, what you just heard,
15 if I -- listening to this just raw, I think we were told
16 that -- just told -- that on their own unilaterally they go out
17 and start to gather information. They repeatedly deny an
18 opportunity to sit down and talk about structure. And -- but
19 during that time when they're denying that opportunity to sit
20 down and talk about the structure, which there's no question
21 that we objected to that, that they were gathering documents.
22 And counsel just said, well, when there was no pending request
23 out. So the rule that he cites didn't particularly apply
24 because they just unilaterally selected one of these three
25 ways, their way of going about granting the documents.

1 THE COURT: But wait --

2 MR. CLIFFORD: Judge, let me finish.

3 THE COURT: No, no, no. I have a question.

4 MR. CLIFFORD: Okay.

5 THE COURT: So when you say -- I'll let you finish,
6 but I have a question about something you already said.

7 MR. CLIFFORD: Yeah.

8 THE COURT: So the -- when you say there was no
9 request out, that part, my understanding there was a request.
10 They were responding to a request.

11 MR. CLIFFORD: Well, maybe I just heard something
12 different. And maybe I misunderstood what counsel said. I
13 believe counsel said that they started gathering documents
14 before they were dealing with a specific request.

15 THE COURT: Okay. That's not how I understood it, but
16 let's clarify that.

17 MR. CLIFFORD: Let's clarify that. Because it goes to
18 the heart of this because --

19 THE COURT: It does.

20 MR. CLIFFORD: -- if they gathered documents in the
21 way they wanted to gather them. And it is indisputable that
22 when you ask for document in its native form, it includes that
23 metadata, and metadata includes that file path.

24 THE COURT: So that is the disputed, for one thing.
25 But was -- were there requests to produce already out or not?

1 MR. KAHLON: There were, your Honor. The point I was
2 making was there was no format for ESI production specified in
3 that request which --

4 THE COURT: Right. That's what I understood you to be
5 saying.

6 MR. KAHLON: Right. Which under the rules then says
7 it leaves it to the producing party to choose the format. Then
8 we get Mr. Blonder's letter, which still allowed us time to
9 conform to it, so we attempted to conform to the production
10 format in that letter. Then we have the meet-and-confer, where
11 native is requested for the first time, and, again, we have a
12 letter confirming this, we tell them we can't comply with it
13 for this production. Going forward, we will attempt to produce
14 e-mails in native format.

15 THE COURT: The reason I stopped you, Mr. Clifford, is
16 this is an important point, as you agreed to, which is there
17 was a formal request to produce sent out. There wasn't a
18 format specified. Rule 34 does say what you do when that's the
19 case. In the interim, there was a letter from Mr. Blonder. It
20 doesn't say anything about file path, and it doesn't say native
21 file format either.

22 MR. CLIFFORD: Well, that's --

23 MR. BLONDER: Mr. Bellas says it it does, Number 1.

24 MR. CLIFFORD: That, we dispute.

25 MR. BLONDER: Number 2, at the same time, as

1 Mr. Bellas just said, he was trying to have discussions with
2 State Farm regarding the method of production, and they were
3 refusing to engage with him. So it can't sit there and say,
4 well, it wasn't specified in their request. Mr. Bellas was
5 trying to engage with them. They won't engage, so therefore
6 they can do what they want. Because that process is, if it's
7 not designated, you have the conversation to agree to the
8 protocol, which is what Mr. Bellas is saying he was trying to
9 do.

10 *THE COURT:* No. What the process says is when you
11 make the request in order to make -- so there's -- so we don't
12 have to have this discussion a year later.

13 *MR. BLONDER:* Right.

14 *THE COURT:* When you make the request, you put in your
15 request to produce what the file format is that you want, or
16 you send them a letter that says what it is that you want.

17 *MR. BLONDER:* And before they produced a single
18 document, they received a letter.

19 *THE COURT:* All right. So let's look at that letter.

20 *MR. KAHLON:* I'm trying to have one of our paralegals
21 send it to us, your Honor.

22 *THE COURT:* All right. We are going to be in recess.

23 *MR. KAHLON:* Your Honor, it's -- I believe it is
24 Exhibit 6 to our February 2nd 2015, letter brief. I think
25 that's what it is, if I'm reading this citation correctly. But

1 I don't have that brief with me, unfortunately.

2 *THE COURT:* February 2nd?

3 *MR. KAHLON:* I think that's right, your Honor.

4 *THE COURT:* Exhibit 6?

5 *MR. KAHLON:* I think it is Exhibit 6, according to my
6 little reference here. It's Mr. Blonder's June 2nd 2014,
7 letter, I think. I think that's what the exhibit is. I'm
8 hoping my citation is right.

9 *THE COURT:* You are correct. So I'm going to print
10 this out. And I will print out a copy for each of you. We are
11 going to read it, and we will continue.

12 We are in recess for 15 minutes.

13 *MR. KAHLON:* Thank you, your Honor.

14 *(Recess)*

15 *THE COURT:* So we went off the record to review the
16 June 2nd letter, and while that was happening, the Court was
17 referenced to three additional letters, which we're making
18 copies of, and we are going to consider those. But since we
19 may be running out of time for this morning, we are going to
20 try to skip forward to some of these other issues, and then we
21 will return to the format of the ESI production and get as much
22 of that done as we can.

23 So authentication of State Farm documents was the next
24 issue.

25 *MR. CLIFFORD:* Right. And there, your Honor, my

1 recommendation is a meet-and-confer. That is a pending issue,
2 but I had a snippet of a conversation with Mr. Safer the other
3 day at a celebration of their partner becoming president of the
4 Chicago Bar, and all the past presidents, we go to that. And I
5 said, I'd like to talk to you about that, and he said fine, and
6 then I guess he is on vacation now.

7 So my recommendation there is that I initiate a call
8 to Mr. Cancila and Mr. Safer and set up a meeting and then we
9 report back to you about where we are at.

10 THE COURT: Okay.

11 MR. CLIFFORD: Is that okay?

12 THE COURT: Yes.

13 MR. CANCELA: And that's fine for such a discussion to
14 occur. I don't think that's quite on the fast burner issue as
15 these other items.

16 THE COURT: Right.

17 MR. BLONDER: It is, Joe, to the extent we will need
18 discovery to authenticate --

19 MR. CANCELA: I'm just saying next week.

20 MR. CLIFFORD: It is not a next week.

21 MR. CANCELA: It's not a next-week issue.

22 THE COURT: You know, I understand why this needs to
23 be clarified, you know. Do they need to go out and lay
24 foundation or not?

25 MR. BLONDER: Right.

1 THE COURT: And I also understand that, with respect
2 to some of the documents you have produced, you may not be in a
3 position to stipulate to the authenticity, while I would guess
4 that the vast majority of them you would be able to, especially
5 ones there aren't third-party documents.

6 MR. CLIFFORD: Right.

7 MR. CANCELA: There's a big -- third-party issues
8 associated with this, and that's what we have to kind of work
9 through and discuss.

10 THE COURT: That makes sense to me, third-party
11 documents especially.

12 MR. CLIFFORD: I'll initiate the call.

13 THE COURT: All right. Sounds good. So there will be
14 meet-and-conferences on authentication issues. And then in the
15 second submission, in addition to the overlapping issues
16 regarding ESI format, there is the issues raised with respect
17 to requests to produce specifically relating to State Farm's
18 briefs in the Illinois Supreme Court. And the primary
19 objection to this is there's work product and attorney-client
20 privilege, and we already talked about that.

21 I think it goes beyond that, and the Court's read of
22 this issue, in my mind, it goes beyond that. There's some of
23 these requests, in the Court's mind, clearly are
24 attorney-client privilege protected and work product protected,
25 and while relevant, most attorney-client work product is. And

1 so this is -- and I'm using the Number 79 as the benchmark
2 here. My initial thoughts on this are A, B, C, and D, and H
3 and I and J and K are attorney-client and/or work product
4 protected documents.

5 MR. CANCILA: A through D, H through K?

6 THE COURT: Yes.

7 Then this is my initial thought on these. You know,
8 we are not talking about crime fraud again.

9 MR. BLONDER: No.

10 THE COURT: We are just talking about is this
11 protected. Now, as it relates to E, F, and G -- well, let me
12 first go to H, I, J -- L. I don't see how -- you know, that's
13 obviously not protected. We are talking about communications
14 between State Farm and another person or party. So those
15 aren't protected, even if it's between the attorneys. So those
16 documents -- so then we -- and in addition to that, I don't see
17 how there is any issue there with respect to work product or
18 there being a problem with there being some issue relating to,
19 is this a contention of some sort? And I'm not sure that's an
20 issue anyway. It pertains to the statements in the briefs.
21 That's pretty much a standard discovery request.

22 MR. CANCILA: So as to that, I mean, we have produced
23 documents that relate to Justice Karmeier, so those would have
24 been swept in what we have previously produced. Work product I
25 think would only come in here to the extent we are dealing with

1 something like post-litigation filing, e-mail communications
2 between State Farm counsel and Justice Karmeier counsel, for
3 instance, you know, relating to whatever pleadings are filed.

4 *THE COURT:* In this case. Post-litigation in this
5 case.

6 *MR. CANCILA:* Yes, yes.

7 *THE COURT:* Okay.

8 *MR. CLIFFORD:* So -- and that's a separate subject
9 that's not before the Court I would think at the moment.

10 *THE COURT:* Yes, it's not. So if there's -- we can
11 revisit that if there's an argument that that's -- shouldn't be
12 considered work product or privileged.

13 *MR. CLIFFORD:* I mean, you know.

14 *THE COURT:* That would have to fall within some sort
15 of joint defense type of theory, wouldn't it?

16 *MR. CLIFFORD:* Well, that's an interesting question in
17 and of itself.

18 *THE COURT:* Well, I'm just saying that's those are --
19 that's all food for thought. You all can chew on those things.
20 I agree. That's not before the Court, and I'm not prepared to
21 delve into that.

22 *MR. CLIFFORD:* And counsel just made a remark about
23 production pertaining to Justice Karmeier that used the term
24 of -- the nice term of folded into or encompassed by other
25 things that we produced. That's been one of our ongoing

1 problems, is identifying what they believe they're producing
2 and what it is responsive to in terms of the request.

3 *THE COURT:* Well, we are going to talk about that here
4 in a minute also.

5 *MR. BLONDER:* Judge, I'm looking at I and J that you
6 just flagged.

7 *THE COURT:* Yeah.

8 *MR. BLONDER:* As I look at those, it wouldn't
9 implicate privilege or work product because it is foundational
10 in the sense of who the people are. It doesn't ask for what
11 would be a privileged communication, but it says who are the
12 people who would know about this.

13 *MR. CANCELA:* Well, that shows persons with whom
14 attorneys would have spoken. Documents that identify the
15 person with State Farm who supplied the information to the
16 attorneys.

17 *MR. BLONDER:* But that would be --

18 *MR. CANCELA:* What could that mean other than --

19 *MR. BLONDER:* Well, that would be on a privilege log.
20 That would be information in terms of foundational information
21 to establish a privilege or a work product exception, so it
22 would be information that's not necessarily protected. Because
23 it's not who did the attorney think through and say, well, who
24 I do need to go talk to? It is reflective of who are the
25 people who would have the information or for which a privilege

1 would be asserted.

2 MR. CANCILA: They've had two logs from us for some
3 extended period of time that list many documents relative to
4 the 2005 and 2011 pleadings.

5 THE COURT: So would you agree that to the extent that
6 I and J simply calls for identification of communications that
7 are on a privilege log, that they would be identified?

8 MR. CANCILA: You mean identified those documents on
9 the privilege log that relate to 2005 and 2011 pleading? I'm
10 just trying to understand what else that means.

11 MR. BLONDER: I think it is something different.

12 THE COURT: Let me --

13 MR. BLONDER: I'm sorry.

14 THE COURT: So these are -- we are talking about H and
15 I.

16 MR. BLONDER: I and J.

17 THE COURT: Okay.

18 MR. CANCILA: Documents that identified the attorneys
19 with knowledge that the statements were accurate or inaccurate.
20 I don't know how that is anything but straight work product
21 attorney-client.

22 MR. BLONDER: Well, but if they are going to say, for
23 example, if Mr. Cancila had knowledge of something, the fact
24 the Mr. Cancila may or may not have knowledge of something
25 isn't privileged. That goes to a foundational issue as to the

1 communications with him may be privileged, but the fact that he
2 is a person for whom certain knowledge may exist is a
3 foundational issue to establish a privilege. It's not the
4 privileged communication in and of itself.

5 MR. CANCELA: It goes to what I know as counsel for
6 State Farm relative to any particular statement being accurate
7 or not accurate.

8 MR. BLONDER: But --

9 THE COURT: I don't see how -- I don't see how J --

10 MR. BLONDER: If there was an e-mail.

11 THE COURT: -- can be anything but attorney-client
12 privilege.

13 MR. BLONDER: Well, but what it may be, Judge, is --

14 THE COURT: Because it's contained in a document.

15 MR. BLONDER: So if there is a document, for example,
16 from Ed Rust to Mr. Cancela -- I'll just pick two examples.
17 The contents of the document may be privileged, but the fact
18 that there's a communication from Mr. Rust to Mr. Cancela, that
19 part would be disclosed. It would be on -- either they
20 produced a document and redact the substance of it as
21 privileged or work product, unless it fits within an exception,
22 or they would take that document, in total, and put it on a
23 privilege log. So the document itself isn't protected. The
24 contents, the substance of it may be protected, but the
25 foundational elements of it are not.

1 MR. CANCILA: So I think I've indicated already that
2 relative to the 2005 and 2011 pleadings, we have logged any,
3 you know, privileged communications and supplied that log to
4 plaintiffs. In one instance, it was a log last year, I
5 believe, that we supplied; in another, it was several months
6 ago. So whatever this foundational element stuff is, they've
7 got a log. And they have that.

8 THE COURT: So you are saying you would agree that --
9 because, of course, we are talking about documents, not
10 communications. So if there's a document that would fall
11 within this category, it's already on a log.

12 MR. CANCILA: Correct.

13 THE COURT: That's been produced.

14 MR. CANCILA: Correct.

15 THE COURT: All right. So it's logged. That's the
16 representation that's being made. It's already been logged.

17 MR. BLONDER: Okay. If that's -- you know.

18 THE COURT: And that would relate to I as well.
19 Because if there was a document that went from someone at State
20 Farm to one of their attorneys, that would be on the privilege
21 log, right?

22 MR. CANCILA: Correct.

23 THE COURT: Okay.

24 MR. BLONDER: A, Judge, we're not asking for the
25 privileged communication. State Farm made representations to

1 the Court. State Farm -- the basis on which State Farm made
2 the representations, that would be -- in my mind, that's fair
3 game. And, again, it is not asking for what was the lawyers
4 given. What was State Farm's basis for a position?

5 *THE COURT:* The -- there is a difference between each
6 document that State Farm relied upon and what's the basis for
7 your position. So what did you rely on in making this
8 analysis? That's attorney-client.

9 *MR. BLONDER:* So if we re-formed subpoint A.

10 *THE COURT:* Well, this goes to my initial thoughts
11 about the distinction between what's attorney-client privilege
12 and work product, is like a contention in an interrogatory,
13 what's the basis for this? Tell me the basis for the
14 statement. Similarly, if you are in oral argument on this,
15 what's the basis for your statement, counsel? That's a proper
16 question. And you couldn't say to the Court -- you know, you
17 couldn't say to the Supreme Court during oral argument, well,
18 that's attorney-client privilege.

19 *MR. CANCILA:* Sure.

20 *THE COURT:* You have to tell the basis.

21 *MR. CANCILA:* Right.

22 *THE COURT:* And so the basis, I believe, would be
23 appropriate. Identify any documents that reflect the basis for
24 that assertion.

25 *MR. CANCILA:* As a contention interrogatory.

1 THE COURT: Well --

2 MR. CANCILA: I mean, as a document request, you take
3 20 requests, and you give 12 subparts to each, and you have 240
4 contention interrogatories that have been posed by these
5 requests.

6 THE COURT: So that's the separate issue. That is a
7 little more complicated, is there are clearly things here that
8 are not privileged. I mean, identifying the -- unless you
9 are -- because it is one thing to say it is just advocacy. We
10 are not saying it's true. That is not the position. You know,
11 my ruling on crime fraud had multiple bases. Your defense has
12 multiple bases, one of which it is just advocacy, but you are
13 not resting on that.

14 MR. CANCILA: No. Certainly. Whether what they said
15 is make believe fiction or not, which is State Farm's position,
16 or whether there's any basis to it, you know, that's -- that's
17 a separate issue.

18 THE COURT: Yeah. And so if you are making -- if you
19 make a contention in a brief that has a factual basis separate
20 and apart from everything that the attorneys considered, in
21 other words, here it is now. It's on the brief.

22 MR. CANCILA: Right.

23 THE COURT: We've adopted this. What is the factual
24 basis that you can assert for that? That's a fair question.

25 MR. CANCILA: As a contention interrogatory.

1 THE COURT: Well, all right. So, yes, it would be for
2 that. Is it a fair question with respect to a request to
3 produce then is the next step. And in looking at that issue,
4 you know, where is the line? I mean, when you ask -- it is a
5 very specific request. What are the documents that support
6 this particular contention, in your mind? Produce them.

7 Why is that an improper request to produce? Do the
8 rules not allow for that?

9 MR. CANCELA: Right. Well, the issue isn't so much
10 produce the documents that support your contention X. The
11 issue is more we are giving you this ton of granular identify
12 the documents that support this contention, this contention,
13 this contention, this contention, span over, you know, 20.

14 And then isolate for us by request, probably subpart,
15 in their minds, you know, which ones, you know, fit which ones.

16 That's like over the -- that's really over the top. I
17 mean we believe in the course of the production we are making
18 in any event and have made in any event that we've provided the
19 documents responsive to these, you know, what they're, you
20 know, driving at here. And we've given illustrations of not
21 only the myriad documents that we've produced, but the
22 documents in their own investigators' materials, in the
23 third-party depositions that have taken place, and other
24 productions that support, you know, our views as well.

25 So that's where the rub becomes, in that, you know,

1 kind of granularity aspect of it.

2 MR. BLONDER: Well, we didn't ask for what third
3 parties may have produced that support their view. We are
4 asking for State Farm's -- to use the Court's rephrasing of our
5 first request, the basis for certain assertions, State Farm's
6 basis. That's what we are asking for, Number 1.

7 Number 2, there's nothing about Rule 34 that says you
8 can't ask a production request for documents that relate to an
9 assertion, you know, in terms of a contention request, I guess
10 would be the way to describe it. It is not prohibited by the
11 rules. There is no -- it says -- you know, Rule 34 says you
12 can ask for documents and tangible things, and they either
13 exist or they don't exist.

14 THE COURT: Right. But the question is, at what level
15 are you allowed to say, tell me everything about your defense?
16 Here's a contention interrogatory, here's a contention request
17 to produce, and I want you to detail this.

18 MR. BLONDER: Well, but we didn't ask for.

19 THE COURT: And with specificity.

20 MR. BLONDER: We didn't ask for it that way. We asked
21 for documents that they relied upon, but, again, take the
22 reformulation of documents that were the basis for. They may
23 have things that aren't in documents that are a basis for.
24 That's not what's asked for here. It's saying what
25 documents -- you know, there's a distinction between the

1 interrogatory, per se, and the information that would be
2 covered and, here, just what documents is it.

3 *THE COURT:* Right. But when you take the two, you
4 know, where is the limit in terms of what you can ask through a
5 combination of interrogatories or requests to produce about?
6 Tell us your defense. Tell us your case.

7 *MR. BLONDER:* Again, Judge, I think if we had gone
8 beyond kind of "give us the documents that were used at that
9 time," again, it's also a temporal issue. We are not asking
10 for now what they may think necessarily. You know, for
11 example, I look at A, and that's just the one I'm focused on.
12 We point to a particular statement in the brief and we say "the
13 documents that State Farm relied upon to make the
14 representation before they were made to the Court."

15 So it's not saying what have you learned in discovery
16 that would relate back, it's at that time, what were the
17 documents that formed the basis of the representation? So it's
18 a -- it's a -- I think that's the distinction. If it was an
19 interrogatory saying, tell us every reason that this was true
20 or that was true. And it was more encompassing temporally.
21 Then I think it might potentially get into the issue you are
22 raising about an interrogatory. We are saying, at that point
23 in time, what are the documents?

24 *MR. CANCELA:* You have already ruled A through D and H
25 through K, and then I think we've addressed I through J.

1 THE COURT: Well, other than -- I also have said --
2 and so you may get a revised one -- or each document that
3 formed the basis of the -- or you know -- of the
4 representation.

5 MR. CANCILA: Each document that formed the basis of
6 the representation --

7 THE COURT: Yeah.

8 MR. CANCILA: -- or each document that provides a
9 basis for --

10 THE COURT: Provides a basis.

11 MR. BLONDER: Hold on. "Provides" takes out the
12 temporal issue. And provides would bring it all the way now so
13 if they looked and said in discovery, for example, the chamber
14 of commerce last week produced a document that said X, that
15 would fit within --

16 THE COURT: No. The representation before they were
17 made to the Court. You have got that in there. I'm still on
18 A. You have got before they were made to the Court. So the
19 temporal limitation is still there.

20 MR. BLONDER: Okay.

21 THE COURT: Provides a basis.

22 MR. CANCILA: Right. And in --

23 THE COURT: So...

24 MR. CANCILA: But in terms of the notion they're not
25 trying to jump temporal to now, how else can one explain E

1 through G? Each document that State Farm -- I'm looking at
2 G -- or its attorneys at any time after the representation was
3 made that would indicate the -- that the representation was not
4 true and/or accurate when made.

5 MR. BLONDER: That one would leap, Joe.

6 MR. CANCILA: Pardon me?

7 MR. BLONDER: That would leap the temporal issue.

8 MR. CANCILA: Well, right. That's the point. This
9 notion that these aren't trying to, you know, impose obligation
10 now or address all, you know, discovery now or address what
11 other people have produced, you know, is crazy when you just
12 look at the wording of those things.

13 MR. BLONDER: We are basically saying what was the
14 basis -- the documents that formed the basis at that point in
15 time, and then subsequent to that, documents that provide a
16 basis that that's either true or false.

17 MR. CANCILA: What was the basis at the time -- keep
18 in mind the timing of these pleadings. So plaintiffs filed,
19 for example, their January 2005 pleading in one week on one
20 day. One week later, or ten days later, you know, State Farm
21 filed its opposition that is supposedly a predicate act now.
22 In the September pleading, again, we are talking -- I can't
23 remember if it was two weeks or three weeks or what, you know.
24 So that's kind of the time frame we're talking about in terms
25 of the reaction to a boat load of assertions that are contained

1 in those pleadings by plaintiffs -- provocative assertions.

2 *THE COURT:* Mr. Clifford.

3 *MR. CLIFFORD:* Certainly having been there for one
4 part of it, specifically being the filer of the '05 document,
5 having argued the case in the Illinois Supreme Court in May of
6 '03, what counsel just said kind of suggests that they didn't
7 have a lot of time to get this right and to make the
8 allegations and remarks that they did because they were doing
9 so in a very quick and hurried way when that belies the facts,
10 it belies what we now know in discovery about communications
11 between Mr. Murnane and State Farm.

12 And so that's why we are pushing on this stuff. And
13 to -- at least alert the Court by way of background to a
14 further issue. In the discovery that we've been doing over the
15 last month or so, it's clear they're challenging the ethics of
16 the lawyers in this case vis-a-vis what those lawyers did or
17 did not do to tell the Illinois Supreme Court about political
18 donations that they had made at the time of the '05 and 2011
19 filings.

20 So ethics -- lawyer ethics are coming here. And they
21 are going to be intertwined somehow. We haven't quite figured
22 out yet where they are going with all this stuff.

23 *THE COURT:* Well, feel free not to intertwine them.

24 *MR. CLIFFORD:* But, you know, this is a goose-gander
25 thing that we've talked about all along with counsel, and that

1 is there were affirmative representations of fact made to the
2 Illinois Supreme Court by lawyers for State Farm, which we
3 maintain and believe the proof will show were outright wrong.
4 And where wrong and what other descriptions you want to give
5 them, that's for another day. So I think that background is
6 helpful for you.

7 MR. CANCELA: And the goose-gander illustration is
8 helpful just recall not document one from plaintiffs produced
9 to us.

10 THE COURT: Now, I'm just looking at this request. I
11 mean, the problem -- if you look at this and you say, Hey, we
12 don't believe that it was inaccurate, well, that part of it is
13 easy.

14 So the next piece of this is identification of
15 documents that have already been produced. And so you make a
16 supplemental request, and they say, Well, we have already given
17 you all of that. We have got nothing else to give.

18 Now, do you need to say where to find it?

19 MR. BLONDER: I believe they do, Judge, because that's
20 the old needle in the haystack.

21 THE COURT: When this is brought to me, these issues,
22 in most cases, here's a pile of documents that are responsive
23 to your 30 requests, they're all in there, I -- if someone
24 complains about that, I say, well, identify it by dates
25 whatever the pages are of documents that are responsive. Why

1 shouldn't that be the case for a supplemental request? If the
2 request is, here's some additional requests, and your answer is
3 simply we've already given that to you. Well, you obviously
4 know you have already given it to them. You have to have gone
5 through that analysis, so you know what you have given them.
6 And you can identify where they are, can't you?

7 MR. CANCILA: So, I mean, we were guided by, you know,
8 the subpart of a Rule 34 that addresses, you know, what's a
9 reasonably usable form or forms.

10 THE COURT: Right.

11 MR. CANCILA: And --

12 THE COURT: But that's the form and format, which we
13 are going to -- which we are enmeshed in that. But there is a
14 difference between "here's the form we are producing it in" and
15 "this is what identifies what's there."

16 MR. CANCILA: Well, sometimes that reasonably usable
17 form also addresses whether you have to identify and associate
18 production with particular requests, you know, or may rely on
19 the fact that the documents you've provided are in searchable
20 format. And, you know, we have cited to your Honor case law
21 where that issue has come up and addressed the issue of is
22 there an obligation to identify and associate the documents
23 produced with particular requests when they've been furnished,
24 you know, in searchable format, and that kind of search can be
25 done itself.

1 MR. KAHLON: Sorry, Steve, real quick.

2 Let me add one other issue, your Honor. On the
3 contention interrogatory front, as your Honor is certainly
4 aware, when you are ask an interrogatory like, Identify all the
5 facts or documents that support or refute your defenses,
6 usually -- at least in the cases I've been involved with --
7 those are deferred until the end of discovery, that's one
8 issue. The other issue is you usually identify the exemplar
9 ranges, et cetera, but that's when you are dealing with a
10 contingent interrogatory.

11 Our view is that you don't -- you can't -- as they
12 themselves concede, use requests for production as a guise for
13 the type of information that Rule 33 is supposed to provide.

14 THE COURT: But they're saying, We just want the
15 documents. We don't want the --

16 MR. KAHLON: And they have them. That's our -- to the
17 extent there are nonprivileged documents, that's one of the
18 things we said in our response. If you are asking for us, you
19 know, all the documents that relate that other basis for this
20 allegation, we have to go through and pick out the documents.
21 The point is we have produced them or on a log, and that's what
22 we said in our responses.

23 MR. CANCELA: And they're in a searchable format.

24 MR. KAHLON: Right. Exactly.

25 THE COURT: But searching.

1 MR. BLONDER: That doesn't address.

2 THE COURT: There's no way -- in this instance,
3 relating to this issue, searching doesn't provide the answer.

4 MR. CANCELA: Well, if you can search "I, C, J, L,"
5 you could search "Karmeier."

6 THE COURT: Well, what is it State Farm provides a
7 basis for this statement in this brief? You can't search that.

8 MR. KAHN: That's a contention interrogatory, in our
9 view.

10 THE COURT: Well, you know, again, the question is, is
11 yes that's a -- you can frame that issue as a contention
12 interrogatory, but you can also say provide the documents.
13 There's interrogatories, there's documents. The Court does not
14 see there is a strict limitation on you can't ask for -- give
15 me the documents that provide the basis. Because you wouldn't
16 necessarily get that same answer when you ask a contention
17 interrogatory. In answering an interrogatory, you can be very
18 specific. You can also reference documents. That's an option
19 that you have. You don't have to. So I don't find that that
20 limitation is that strict.

21 So the Court is okay with this notion of what we are
22 going to call in general, you know, requests for production
23 being contention-type requests for production. I think that
24 that is, in general, okay. There are limitations, but I don't
25 see that they have been exceeded here, and I don't think that,

1 as it relates to these, a searchable format is going to be able
2 to address the issue.

3 So what we are left with is, you are going to have to
4 rephrase A --

5 MR. BLONDER: Yep.

6 THE COURT: -- as I've started. And then we've got E,
7 F, and G, which we haven't had as much discussion about.

8 MR. BLONDER: And L. And L you said was okay.

9 THE COURT: L, you know that -- L is fine.

10 MR. BLONDER: Yeah.

11 THE COURT: L is an appropriate request.

12 MR. CANCELILA: Could we provide further briefing to
13 your Honor on this? This is something that we put together
14 in -- actually, Mr. Kahlon put it together.

15 THE COURT: The answer is yes. I've always said if I
16 get these things the day before, and there's been some
17 meet-and-confer, and there's a particular topic that you want
18 to provide additional information on, I'm okay with that.

19 MR. CANCELILA: Okay.

20 MR. BLONDER: Joe, on which aspect, just so we're...

21 MR. CANCELILA: On -- I mean I -- I want to understand
22 where you're -- what I've heard you leaning is that some of
23 these are clearly privileged --

24 THE COURT: Right.

25 MR. CANCELILA: -- and that was.

1 THE COURT: And if they're privileged and it's
2 represented in a document, unless it's post litigation --

3 MR. CANCELA: It has to be on a log.

4 THE COURT: -- everyone has agreed that has to be on a
5 log.

6 MR. CANCELA: Right. Right.

7 THE COURT: And if -- so that is encompassed within B,
8 C, D, H, I, J, and K.

9 MR. BLONDER: Right.

10 THE COURT: A, in the manner reformulated by the Court
11 would be appropriate; as written, it's also privileged.

12 MR. BLONDER: Judge, do you want us to serve another
13 request for each of these reformulated to A, or can we modify
14 it on its face based on what we are doing on the record?

15 MR. KAHLON: I didn't mean to take your Honor's --

16 THE COURT: Oh, I think the quicker way through it is
17 just to modify it, as we've discussed.

18 MR. CANCELA: Well, I mean --

19 MR. CLIFFORD: Yes.

20 MR. CANCELA: -- if they could provide us with what
21 that is.

22 MR. CLIFFORD: We will.

23 MR. BLONDER: Sure.

24 THE COURT: You are in agreement was what it is in
25 writing, but just modify it. You don't have to send it -- send

1 a letter.

2 MR. CANCILA: Right. Right.

3 THE COURT: And that leaves E, F, and G and A.

4 COURT REPORTER: G and what, Judge?

5 THE COURT: E, F, G, and A, as referred.

6 MR. CANCILA: Right. Right. And so the issue there I
7 think would be kind of a -- you know, to what extent we have to
8 go through this identification process, the granularity
9 involved with that. Or if you are not commenting on what a
10 good faith level of identification is. You know, there's going
11 to be like a lot of, you know, overlap, you know, between these
12 various requests. Can you give a little sense of what your
13 exceptions would be?

14 THE COURT: Well, if there's overlap, that's fine.
15 There's no problem with overlap.

16 MR. CANCILA: Granularity-wise.

17 THE COURT: Well, the documents responsive to this
18 request are found here.

19 MR. CANCILA: To request 79, not the subparts.

20 THE COURT: No. I think the subparts have to be
21 identified because there's a clear difference between, for
22 instance, A and G.

23 MR. CANCILA: Okay. How many pages? Five?

24 MR. KAHLON: For the brief? Yeah. I think five
25 should be okay. And just to be -- because I want to make sure

1 I understand where your Honor is coming from. Because this is
2 obviously going to effect the discovery we serve on the
3 plaintiffs because even if -- you know, I think what your Honor
4 is suggesting is that the parties might have an obligation in
5 response to a request for production to marshal all of the
6 evidence that either supports their case or doesn't in response
7 to these requests.

8 *THE COURT:* Well, this is the second. You had raised
9 the issue of putting these off -- the responses --

10 *MR. KAHLON:* That's -- yes.

11 *THE COURT:* -- until the close of discovery.

12 *MR. KAHLON:* And that's where I was going with it,
13 your Honor.

14 *THE COURT:* And that's -- and that's something you can
15 address as well --

16 *MR. CANCELILA:* Okay.

17 *THE COURT:* -- within that request. Because these are
18 contention requests, is that something that you should be able
19 to respond to at the end --

20 *MR. CANCELILA:* Right.

21 *THE COURT:* -- or not?

22 *MR. CANCELILA:* Okay.

23 *THE COURT:* And you all can give me your views on that
24 as well, but I think we have narrowed it, to some degree.

25 *MR. CANCELILA:* Can we suggest five or seven pages?

1 MR. KAHLON: I think we have got the hearing next
2 week. So maybe what does your Honor think in terms of timing,
3 at least maybe two weeks?

4 THE COURT: Yeah. If we are not going to cover this
5 one at the next one, which I don't intend to, but what would
6 you like in terms of time to address this particular point?

7 MR. KAHLON: I think two weeks.

8 MR. BLONDER: Two weeks from tomorrow.

9 MR. KAHLON: Two weeks from tomorrow should be
10 sufficient time, your Honor.

11 THE COURT: Can you do it simultaneously?

12 MR. BLONDER: I think -- we don't know exactly what
13 they are going to say. So...

14 THE COURT: All right. So two weeks from tomorrow.
15 You want seven pages?

16 MR. KAHLON: I think that's fine.

17 THE COURT: A letter brief, single-spaced, is that
18 what you're asking for?

19 MR. KAHLON: That's perfectly fine, your Honor.

20 MR. CANCELA: Nine font.

21 MR. BLONDER: We will respond a week after that.

22 THE COURT: All right. So that puts us at the 9th and
23 the 23rd.

24 MR. KAHLON: And just to be clear, your Honor, I think
25 our positions on a lot of this have already been signaled to

1 plaintiffs' counsel. We have never heard their response to it.
2 So we would like, actually, if we are going to do briefing on
3 this, because it is a big issue, simultaneous or give us the
4 chance to reply because we never heard their --

5 *THE COURT:* Reply.

6 *MR. BLONDER:* Okay.

7 *THE COURT:* Let me give you until the 29th to reply.
8 And we might as well get a time for us to come back anyway for
9 our next -- wait a minute.

10 *MR. CLIFFORD:* Judge, are you thinking July still?

11 *THE COURT:* We are not going to have this issue done
12 until the end of July so...

13 *MR. CLIFFORD:* Okay. Yeah.

14 *THE COURT:* We can do it at the very beginning of
15 August. How about the 7th?

16 *MR. CLIFFORD:* I personally can't be here. On
17 July 29, I will be married 42 years, and there is a little
18 trip. And if I cancel that trip --

19 *THE COURT:* I'm not asking you.

20 *MR. CLIFFORD:* -- you might have to invoke some of
21 your other powers.

22 *MR. BLONDER:* Judge, the 7th doesn't work for me, and
23 if Mr. Clifford can't be here.

24 *THE COURT:* Can you do it the following week?

25 *MR. CLIFFORD:* I don't return to the States until the

1 18th of August. I come back the 17th.

2 THE COURT: Well...

3 MR. CLIFFORD: I could be here on the 18th or 19th.

4 THE COURT: That's putting things off a while.

5 MR. BLONDER: Judge, I could be here the 11th, 12th,
6 or 13th.

7 MR. CLIFFORD: I can try to phone in.

8 THE COURT: As long as that won't -- well, I'll leave
9 that at your discretion.

10 MR. CLIFFORD: I can engineer that one.

11 MR. CANCELA: The 11th or 12th would work for me, not
12 the 13th.

13 *(An off-the-record discussion was had)*

14 THE COURT: August 11th, at 2:00, we will address this
15 issue, and there will be others. The 8th, we are going to
16 address the issue of search terms. And the one thing that we
17 haven't nailed down is also the format for ESI.

18 MR. KAHLON: That's right, your Honor.

19 MR. BLONDER: Judge, before we get to that or others,
20 our proposal is that the entire schedule be re-set by 90 days.
21 Just as we are trying to get through discovery, we just take
22 all dates and just -- 90 days.

23 THE COURT: You guys just file a quick joint motion on
24 that.

25 MR. CANCELA: Yeah. I don't think that's going to be

1 a joint motion. So, you know, in terms of the 90 days,
2 because, I mean, we are not really to the point of having a
3 discovery close or anything, what I think they're trying to
4 avoid, perhaps, is the impending class certification.

5 MR. BLONDER: Actually, no, that's not the issue.
6 That's not the issue.

7 THE COURT: All right. Talk about it and file either
8 a joint or non-joint motion. Yeah.

9 MR. BLONDER: Just so the Court knows, we are looking
10 basically suggesting 90 days for everything.

11 THE COURT: I understand. I understand. But I think
12 since there is not agreement, and there may not be a joint
13 motion, talk about it and file what it is you are asking for so
14 that it is clear what's being agreed to and what's not.

15 MR. CLIFFORD: Yes, sir.

16 MR. CANCELA: Are you done with your -- do you have
17 anything else?

18 MR. BLONDER: On the scheduling issue, if we are going
19 to back to the form production issue, I have one comment before
20 we get into the letters or other issues. I can either hold it
21 or --

22 THE COURT: Do we have any other.

23 MR. CANCELA: Well, I want to raise -- and I haven't
24 had a chance to meet-and-confer yet with plaintiffs on this,
25 but I wanted to just preview with your Honor that we may have

1 an issue with a pending 30(b)(6) request that we just received
2 that we are going to be objecting to, and we will
3 meet-and-confer with plaintiffs.

4 MR. BLONDER: Why am I not surprised?

5 MR. CANCELA: It is like on a --

6 THE COURT: All right. So January 8th, it's going to
7 now be at 1:00.

8 MR. CANCELA: January.

9 THE COURT: July 8th, at 1:00, we are going to talk
10 about the search terms. We are going to talk about the format
11 of production -- because I have kept my people out there in the
12 hall long enough. And then we are going to also address, if
13 necessary, the 30(b)(6) issue.

14 MR. BLONDER: And we are going to deal with the
15 schedule at that point in time too? Because, again, Judge, we
16 had not meant this as an issue with respect to class cert.
17 briefs, but if they are now going to fight us on that 30(b)(6)
18 deposition, which does relate to that, then there will be an
19 intertwining of this.

20 THE COURT: That's fine. I mean, if you can identify
21 what the disagreement is, we can talk about it.

22 MR. CLIFFORD: That's always a good start, to identify
23 where you are.

24 THE COURT: Yeah.

25 MR. CANCELA: Okay.

1 THE COURT: All right. So that's it, right?

2 MR. KAHLON: I believe so.

3 MR. CLIFFORD: I believe so, sir.

4 THE COURT: All right.

5 MR. KAHLON: Thank you, your Honor.

6 THE COURT: See you all next Wednesday.

7 MR. CLIFFORD: I suggested that we have a court
8 reporter next Wednesday. Is that okay or no?

9 THE COURT: Yes.

10 MR. CLIFFORD: It is going to be easier.

11 THE COURT: I've talked to them, and we are going to
12 have at least one of them who can be here late.

13 MR. CLIFFORD: That would be great.

14 THE COURT: All right.

15 MR. CLIFFORD: Thank you.

16 MR. KAHLON: Before we go off the record, I just
17 wanted to clarify something because your Honor, I think, is
18 going to be looking at the letters. I wanted to clarify one of
19 the statements I made earlier. I had said that we didn't
20 produce any documents or there wasn't a request for native file
21 format. I just wanted to clarify because this is not in
22 dispute, I think. I don't want to mislead the Court. They did
23 ask for PowerPoints and Excel spreadsheets in native file
24 format, and we have been producing those consistently. I just
25 wanted to make sure that was in the record.

1 MR. CLIFFORD: And we challenge that interpretation of
2 the request, but that's for another time.

3 MR. BLONDER: And just for the record, I understand
4 Mr. Kahlon's point. When we had ED folder on the list, we have
5 just spoken with our consultants during the break. They said
6 that's file path. So from the techno side, ED folder is file
7 path.

8 MR. KAHLON: We will address that at the next hearing,
9 your Honor. We have a letter that deals with that issue.

10 THE COURT: Okay. Great. See you next Wednesday.

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13 REPORTER'S CERTIFICATE

14 I, Molly N. Clayton, RPR, FCRR, Official Court Reporter
15 for the U.S. District Court, Southern District of Illinois, do
16 hereby certify that I reported with mechanical stenography the
17 proceedings contained in pages 1 - 75; and that the same is a
18 full, true, correct and complete transcript from the record of
19 proceedings in the above-entitled matter.

20 DATED this 9th day of July, 2015.

21 s/Molly Clayton, RPR, FCRR
22 _____
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24
25